



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

OCT 08 2004

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Mari Johnson*

for Robert P. Wiemann, Director  
Administrative Appeals Office

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identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The Director, California Service Center, initially approved the employment-based immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

We note that the director refers to the Kabbalah Learning Centre (KLC) as the petitioner. This is incorrect, because Part 9 of the Form I-360 petition bears the signature of the alien beneficiary, rather than any representative of KLC. [REDACTED] an administrator for that entity, signed Part 10 of the form. The signature on Part 10, however, merely affirms preparation of the petition form. The signature on Part 9 assumes legal responsibility, under penalty of perjury, for the accuracy of the information in the petition. Because the alien beneficiary signed Part 9, the alien, not KLC, is responsible for the petition and, thus, the petitioner. This finding is without consequence to the disposition of the appeal, because counsel (who filed the appeal) represents both the alien and the intending employer.

The petitioner seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a Kabbalah/theology teacher at KLC. The director determined that the petitioner had not established that he had the requisite two years of continuous work experience as a Kabbalah/theology teacher immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established that the position constitutes a qualifying religious occupation.

The director mentioned other factors, such as the employer's ability to pay for the petitioner's compensation, but the decision appears to contain no clear findings regarding these factors. Therefore, we shall not discuss those factors in this decision.

Section 205 of the Act, 8 U.S.C. 1155, states: "The Attorney General may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988)(citing *Matter of Estime*, 19 I&N 450 (BIA 1987)).

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on October 25, 1999. Therefore, the petitioner must establish that he was continuously performing the duties of a Kabbalah/theology teacher throughout the two years immediately prior to that date.

At the time of filing, the petitioner had last entered the United States on August 12, 1998, as a J-1 nonimmigrant. Thus, the petitioner was outside the United States for much of the qualifying period.

In a letter accompanying the petition, KLC secretary [REDACTED] states that the petitioner "began working with our center in New York in the summer of 1987 and is currently working in our center in Philadelphia since April of 1999. In the last 12 years, [the petitioner] has traveled to Brussels, Holland, France, Paris, London, India, Israel, Brazil and Venezuela." The petitioner's passport reflects substantial international travel during the 1990s, but evidence of travel is not *prima facie* evidence that the petitioner worked full-time for KLC during that period.

[REDACTED] adds that KLC "does not offer wages or a salary, but does offer room, board and all medical expenses to be provided to the beneficiary." Thus, evidence of the petitioner's past work would have to take some form other than canceled checks, Forms W-2, and the other documentation normally generated by salary payments.

The initial filing contains substantial background material about KLC, including numerous published articles, but no documentation of the petitioner's past work for the organization. Therefore, the director requested "evidence that establishes that the beneficiary has the continuous two years full-time experience" required by law. In response [REDACTED] KLC's secretary of corporations, stated that KLC does not pay wages to its religious workers, and therefore the director's request "is not applicable to our organization." [REDACTED] did not explain why alternative evidence is not available.

The director approved the petition, and the petitioner applied for adjustment to lawful permanent resident status. Subsequently, however, the director issued a notice of intent to revoke, stating that additional evidence was necessary to establish that the petitioner worked for KLC as claimed. The director stated "[t]here is no evidence that the beneficiary receives room, board, medical and dental benefits."

In response, counsel has submitted a list of Kabbalah Centers where the petitioner is said to have taught since August 1987. This list is not corroborated by any contemporaneous documentation. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As noted above, stamps in the petitioner's passport establish the fact, but not the intent, of the petitioner's travel.

Counsel cites a "Certificate of the Kabbalah Centre attesting to [the petitioner's] Vow of Poverty and his living arrangements." This document, signed by [REDACTED] states that the petitioner "now lives in a communal residence of the Kabbalah Religious Order at [REDACTED] Los Angeles, California." [REDACTED] did not state how long the petitioner had resided there.

Previously, as part of the adjustment application, the petitioner had submitted Form G-325A, which provides biographical information about the alien seeking benefits. This form contains the following information:

APPLICANT'S RESIDENCE LAST FIVE YEARS

[REDACTED] San Diego, California	July 2000 – present
[REDACTED] Ardmore, Pennsylvania	January 1999 – July 2000
[REDACTED] Higienopolis, Sao Paulo, Brazil	August 1996 – January 1999

APPLICANT'S EMPLOYMENT LAST FIVE YEARS

[REDACTED]	Teacher	August 1986 – present
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The record contains no evidence that any of the above residential addresses are residences operated by [REDACTED] or affiliated entities, or that [REDACTED] owns or leases those properties. A list of locations, provided by the petitioner, lists the Los Angeles location, but there is no indication of any location in San Diego or Ardmore. The document lists a Sao Paulo location, but provides no street address for that branch. The assertion that the petitioner resided in Sao Paulo until January 1999 conflicts with the petitioner's documented entry into the United States in August 1998; he did not depart the United States again until 2000.

The petitioner has the burden of proving the required past experience, and this burden does not disappear if the compensation is non-monetary. If the alien's compensation consisted of room, board, and medical care, the petitioner must demonstrate that these have been provided by the source claimed.

The director revoked the approval of the petition, noting that the information on the petitioner's Form G-325A appears to conflict with the claim that the petitioner has relied solely on housing provided by KLC. On appeal, the petitioner submits copies of documents linking KLC to the addresses in San Diego and Ardmore. It remains that the petitioner's claimed residence at those addresses covers only the last few months of the qualifying period. With regard to the petitioner's activities prior to January 1999, the record contains only stamps in the petitioner's passport, and the petitioner's assertion that he resided in Brazil until January 1999 (when in fact he arrived in the United States in August 1998).

The record also continues to lack any *contemporaneous* documentary evidence establishing that the petitioner worked full-time, exclusively for KLC during the 1997-1999 qualifying period. The record indicates that KLC maintains financial records, real estate records, and a scrapbook of news clippings about KLC and Kabbalah, but there is no indication that the petitioner's work for KLC has generated any contemporary records at all. The petition relies primarily on the assertions of KLC officials in California, who attest to the petitioner's activities in Pennsylvania, New York and abroad, without any demonstration that they have either personal knowledge or corroborating records to establish their standing to make such attestations.

The petitioner has clearly been involved with KLC in some capacity for several years, but the materials in the record are not sufficient to establish the extent or nature of that connection. The petitioner is identified as a teacher or instructor, but there are, for instance, no contemporaneous records or schedules showing how many classes the petitioner taught, no course catalogs or brochures identifying the petitioner as a teacher, and so on. We have only the after-the-fact assertion that the petitioner was a full-time teacher. KLC representatives also refer to the petitioner as a researcher, but there are no published works by the petitioner, internal research reports completed during the qualifying period, or other tangible evidence that any productive research took place. Simply studying the Kabbalah may be personally fulfilling for the petitioner, but such study, by itself, is hardly "research" in the occupational sense.

For the above reasons, we concur with the director's finding that the petitioner has failed to establish continuous work throughout the two-year qualifying period.

The remaining issue is whether the petitioner seeks employment in a qualifying occupation. The regulation at 8 C.F.R. § 204.5(m)(2) defines "religious occupation" as an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations. The regulation therefore reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature.

In a letter submitted with the initial petition, Lori Silverstein, secretary of KLC, stated "[o]ur organization is in need of a religious instructor. . . . In order to qualify for this position, a person must have background knowledge of Kabbalah. . . . The person filling the position of an instructor must be multi-lingual." Ms. [REDACTED] stated that the petitioner works 48 hours per week.

The director requested further information regarding the position offered to the petitioner. In response, [REDACTED] stated that the position requires "background knowledge of Kabbalah" and fluency "in more than one language." These assertions merely repeat, rather than amplify, the prior description of the petitioner's position. [REDACTED] added that the petitioner "researches and teaches between 60-80 hours per week," whereas [REDACTED] had earlier indicated that the petitioner works 48 hours per week.

The director, in revoking the approval of the petition, stated that the petitioner has not established that the position requires a full-time employee or qualifies as a religious occupation. On appeal, counsel states that the petitioner "is a Rabbi and a Teacher of Torah." Counsel cites a 1995 ordination certificate, confirming this assertion. The petitioner had submitted copies of this certificate previously, but KLC officials had never stated that the petitioner had worked, or would work, in the capacity of a rabbi. Therefore, the petitioner's 1995 ordination is not relevant to central issues of the petition.

Counsel maintains that the beneficiary "provides spiritual and moral guidance to members . . . and teaches private and group classes to new and returning students according to the Zohar, the literary source for the entire radiance of all Kabbalistic knowledge." The regulation at 8 C.F.R. § 204.5(m)(2) includes religious counselors and religious instructors as qualifying examples of religious occupations. If the petitioner's duties conform to what has been described, these duties would appear to qualify the petitioner as a worker in a religious occupation. Much of Judaism is rooted in ancient tradition, and passing along those traditions and teachings appears to be so integral to the faith that it can be called a traditional religious function when carried out in the setting of a full-time, compensated occupation. We stress that this finding is entirely separate from the finding regarding the beneficiary's experience, because it is based on the description of the beneficiary's duties, rather than on any evidence (there is none to speak of) that the petitioner has, in fact, performed those duties in the past.

In summation, the critical flaw in the petition now under consideration concerns not the petitioner's claims, but the lack of adequate support for those claims. A handful of Los Angeles-based sources have attested to the petitioner's activities around the world, without demonstrating their standing to make those claims. (Being a KLC official does not inherently convey personal knowledge of the work of every KLC worker.) If all of the petitioner's claims are true, it appears that the petition would be approvable, but the petitioner has not met his burden of establishing that those claims are, in fact, true. The absence of blatant contradictions in the petitioner's claims does not create a presumption of eligibility, and the unsalaried nature of the petitioner's claimed work changes the nature, rather than the level, of evidence required to corroborate such claims.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.